

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	MM Docket No. 99-25
Creation of a Low	)	
Power Radio Service	)	RM-9208
	)	RM-9242

**PETITION FOR RECONSIDERATION OR IN THE  
ALTERNATIVE, CLARIFICATION OF**

**UNITED CHURCH OF CHRIST, OFFICE OF COMMUNICATION, INC.;**

**NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE USA,  
COMMUNICATION COMMISSION;**

**GENERAL BOARD OF GLOBAL MINISTRIES OF  
THE UNITED METHODIST CHURCH;**

**DEPARTMENT FOR COMMUNICATION OF THE  
EVANGELICAL LUTHERAN CHURCH IN AMERICA;**

**CIVIL RIGHTS FORUM;**

**LIBRARIES FOR THE FUTURE;**

**AND**

**CONSUMERS UNION**

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**PETITION FOR RECONSIDERATION OR IN THE ALTERNATIVE  
CLARIFICATION OF UCC, *et al.***

**Introduction and Summary**

UCC, *et al.* submit this Petition for Reconsideration or Clarification to address a number of minor policy questions administrative matters in this docket. Addressing these issues will bring more consistency and rationality to the low power radio rules. This Petition is timely filed.<sup>1</sup>

UCC, *et al.* first congratulates and thanks the Commission and its hard-working staff for bringing low power radio (“LPFM”) to fruition in such a short period of time. It is truly a grand achievement that over 1,800 nonprofits have thus far applied for licenses, and that this week the remaining portions of the country will have the opportunity to seek low power radio licenses. This is the end of the low power radio’s first phase as a new service, and the beginning of its next phase as it takes its place alongside other noncommercial broadcasting services.

UCC, *et al.* submit this petition because in several areas, the Commission’s rules require clarification or reconsideration. In a number of areas, applicants require a small amount of additional flexibility so that they may fully avail themselves of the service, and so that spectrum may

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<sup>1</sup> The *Second Report and Order*, FCC 01-100 (rel. Apr. 2, 2001) (“*Second R&O*”), in this docket was published on May 10, 2001. See 66 Fed. Reg. 23861 (May 10, 2001). Petitions for Reconsideration are due within 30 days of that date. 47 C.F.R. § 1.106(f).

be allocated the most efficiently. Several other of UCC, *et al.*'s requests are premised on the grounds of procedural fairness. Specifically, UCC, *et al.* asks that the Commission or the Bureau:

- Clarify or alter the tie-breaker system so that any group of mutually exclusive applicants that receive points are eligible to share points as a tie-breaker;
- Extend the deadline for mutually exclusive applicants to submit a time-sharing proposal from 30 to 90 days from the date a group of mutually exclusive applications is announced;
- Allow applicants to amend an application to move to a new channel if there are no other applicants for that channel, if the new channel would not result in a new mutually exclusive application, and if the move would remove mutual exclusivity between applicants;
- Allow applicants that submit a time sharing agreement also to relocate their transmitter to a central location, provided that a location is available in the Commission's channel finder;
- Allow LPFM stations to use uncertified decoders or simple EAS radios to identify emergency messages because certified decoders are not available and are not likely to become available on the market;
- Amend the definition of a minor change to include a transmitter relocation of up to 5.6 km, instead of 2 km, for LP100 licenses and 3.2 km, instead of 1 km, for LP10 applications;
- Allow an applicant to amend its application if it can show that its application was rejected solely because of reliance on the FCC's channel finder and underlying database;
- Clarify that locally-originated programming must be *originally* produced within 10 miles of a LPFM transmitter, and that time-shifting programming produced elsewhere does not meet that definition;
- Allow applicants that engaged in previously unlicensed broadcasting an opportunity to amend their applications to remove unlicensed broadcasters from their boards of directors; and
- Improve communications with LPFM applicants by improving and making more consistent the LPFM web sites and possibly transfer some responsibility for communications to the Consumer Information Bureau.

These changes will help improve the management and rationality of the LPFM service.

Adopting these changes will help LPFM to run as efficiently and smoothly as possible for the benefit of Commission staff, applicants, and others who must rely on the Commission's scarce resources.

## **Mutually Exclusive Applications**

In the *Report and Order*, the Commission adopted a point system and a time-sharing tie-breaker for selecting among mutually exclusive applicants. *Report & Order*, 15 FCC Rcd 2205, 2258-64, ¶¶ 136-152 (2000). The Commission will allow any time-sharing proposal that includes all mutually exclusive applicants. *Id.* at 2258, ¶ 136. The Commission determined that, within 30 days of a Public Notice announcing a tie among applicants, those applicants would be allowed to submit amendments to their applications incorporating time-share proposals. *Id.* at 2262, ¶ 147. The applicants could either submit a proposal including all applicants, or a proposal including some applicants. *Id.* In addition, the Commission allowed applicants to submit universal settlements that could also include time-sharing agreements. *Id.* at 2264, ¶ 150; 47 C.F.R. § 73.3525. Several issues arise with respect to this process.

*Time and Point Sharing.* Because the Commission termed the opportunity to share points a “tie breaker” it is not clear whether applicants that do not have the same number of points could time-share with each other. To the extent that the Commission held or implied that only applicants that received the same number of points could share points, UCC, *et al.* ask the Commission to reconsider this holding and to determine that any group of mutually exclusive stations comprised of stations that receive points are eligible to share points as a tie-breaker. To the extent that the Mass Media Bureau can issue a clarifying ruling pursuant to its delegated authority in this regard UCC, *et al.* ask the Bureau to do so.

Allowing a wide range of applicants to share points will further the Commission’s policy goals for LPFM and would be consistent with its justification for adopting a time-sharing tie-breaker. The Commission found that time-sharing would increase the number of entities utilizing the service and would be practical for localized stations. *Id.* at 2263, ¶ 148. Such a policy would

encourage a wide number of groups to cooperate to obtain a license and thus increase the likelihood that more groups will obtain some opportunity to broadcast. Limiting sharing to applicants that receive at least one point will ensure that groups of some merit will be favored. Such a rule is not too restrictive, as it would not eliminate the Commission's decision to allow universal settlements, which allows all mutually exclusive applicants to come to an agreement regardless of how many points they receive.

*Time Allotted for Submitting Time-Sharing Amendment.* The Commission will allow only 30 days for LPFM stations to come to an agreement with fellow mutually exclusive stations and to submit an amendment. This time period is too short. UCC, *et al.* asks that the Commission extend the time-sharing deadline to 90 days. LPFM applicants are largely comprised of small organizations with few administrative resources. In addition, few have access to the expertise of professional engineers. As a result, many have not yet identified the applications with which their application is mutually exclusive. Thus, they will only be able to begin negotiations after they receive notice from the Commission. Thirty days is an incredibly short time period for two or more small organizations to begin and complete negotiations. Volunteers have competing schedules, old animosities within the community may be need to overcome, or, most likely, trust must be built up between organizations that have never worked together before. These negotiations will not be conducted by experienced attorneys, as in other services, but will be conducted by volunteers. Moreover, virtually all applicants are governed by Boards of Directors who will likely have to schedule a meeting and approve any time-sharing agreement, adding additional time to the process.

The experience of full-power noncommercial stations with many professional staff and legal counsel have demonstrated that negotiating settlement agreements entails a great deal of time. In the full-power Noncommercial Educational Comparative Standards proceeding, MM Docket 95-31,

some applicants have been aware of other mutually exclusive applications for many *years*. These applicants learned of the point system under which they would operate in April 2000. *Comparative Standards for Noncommercial Educational Applicants, Report & Order*, 15 FCC Rcd 7386 (2000). After the Commission issued minor modifications and clarifications to the point system in February, *Memorandum Opinion and Order*, MM Docket 95-31, FCC 01-64 (rel. Feb. 28, 2001), the Bureau determined that these applicants should obtain approximately 45 days to negotiate settlement agreements. *Public Notice*, DA 01-729 (rel. Mar. 22, 2001). These agreements have taken longer than expected, and the Commission recently granted these stations an additional 45 days to negotiate these agreements. *Public Notice*, DA 01-1245 (rel. May 24, 2001). Comparing the resources and notice granted to the full power mutually exclusive applicants demonstrates that 30 days from notice of mutual exclusivity for LPFM applicants is completely inadequate.<sup>2</sup>

Extending the time period for negotiating settlements will serve the Commission's interest in efficiency. It is better for applicants to produce a mutually acceptable agreement among themselves rather than for the Commission to intervene. The more time available to negotiate an agreement, the more likely it is that an agreement can be constructed. This will further encourage applicants to negotiate agreements among as many applicants as possible. An increased number of agreements will reduce administrative burdens on the Commission's staff and will reduce the number of dissatisfied applicants that might be inclined to pursue other remedies to obtain a license. The Commission should extend to 90 days the time allowed for applicants to negotiate time-sharing agreements.

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<sup>2</sup> Nor would allowing applicants the opportunity to seek a waiver be an adequate solution. Waivers require additional resources and create additional complications in the eyes of unsophisticated applicants. Setting a clear and fair rule is a much more equitable and workable approach in a service that is geared for small noncommercial participants.

*Increased Efficiency Where Frequencies are Available.* The Commission made many decisions to increase the deployment of LPFM licenses. However, one decision by the Commission will allow spectrum to lie fallow while applicants that wish to use the spectrum and who applied for a license in a timely fashion stand by unable to broadcast. If two applicants coincidentally apply for a single frequency even if more than one frequency is available in a community, one frequency will remain empty. These two applicants are thus mutually exclusive with one another, but, if allowed, either could amend its application to another frequency allowing both applicants to obtain a license.

UCC, *et al.* therefore ask that the Commission allow for the more efficient use of spectrum and the wider availability of stations by allowing applicants to move to a new channel if there are no other applicants for that channel, if the new channel would not result in a new mutually exclusive application, and if the move would remove a mutual exclusivity between applicants. Such amendments should be allowed within the same time period as that granted by the Commission for submitting time-sharing agreements. Above UCC, *et al.* request the Commission extend that time period to 60 or 90 days after the Commission releases a Public Notice announcing mutually exclusive applications. This is an appropriate time period for amendments to open frequencies. Tying the time period to that for submitting time sharing agreements is logical because decisions to relocate to another frequency are likely to be a factor in negotiations among applicants with competing applications.

A decision to allow such amendments would be consistent with the Commission's strong preference for spectrum efficiency, which have driven a significant number of decisions in this docket. *See, e.g., Report & Order*, 15 FCC Rcd at 2222, ¶ 40, 2261, ¶ 143. In fact, the concern for spectral efficiency in this docket is so strong, that the Commission's failure to take this action might



well be arbitrary and capricious.

*Amendment to Facilitate Time Sharing.* UCC, *et al.* request that the Bureau or Commission allow applicants that submit a time sharing agreement to also relocate their transmitter to a central location to all parties to the time sharing agreement, provided that location is available. Practically speaking, once two or more groups have negotiated an agreement to share a frequency, they are likely to need location adjustments to suit the needs of all parties to the agreement. Flexibility on the part of the Commission in this regard will increase the likelihood that applicants will be able to come to a time-sharing agreement, thus decreasing the workload on Commission staff and increasing spectrum efficiency. UCC *et al.*'s proposal below to allow LP100 applicants to relocate their transmitters 5.6 km rather than 2 km will also facilitate time sharing agreements.

### **Emergency Alert System**

UCC, *et al.* seek a change in the Commission's EAS requirements for LPFM stations. The Commission required LPFM stations to use certified EAS decoders in its original *Report and Order*.<sup>3</sup> Although the Commission imposed this requirement, it acknowledged that such decoders were not currently available on the market and offered to grant a temporary exemption for LPFM stations until such decoders are available. *Report & Order* 15 FCC Rcd at 2282, ¶ 196. Currently certified decoders are not available on the market. *See* Declaration of Darryl Parker, attached. Such decoders are unlikely to become available in the market because the expense of adding a memory

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<sup>3</sup> In the *Report and Order*, Commission determined that LPFM stations must install and operate certified decoding equipment which will alert station personnel to emergency alerts. *Order* at 2280, ¶ 193. After receiving an alert, station personnel are required to pass information along to listeners. *Id.* Because the Commission had exempted Class D noncommercial educational TV and LPTV stations from installing or operating the encoder portion of EAS systems, the Commission decided to extend the same policy to LPFM stations. *Id.* at 2281, ¶ 195.

function in order to achieve certification would be quite expensive. *Id.*<sup>4</sup> Therefore, we suggest that LPFM stations be required to use uncertified decoders or simple EAS radios to identify emergency messages.<sup>5</sup> As evidenced in the affidavit, such decoders could be modified to broadcast all messages (alerts, warnings, and tests) automatically. While such a configuration may not meet the needs of more sophisticated LPFM stations because they would automatically interrupt an LPFM broadcast, it would provide the required notice to any listener of an emergency. More sophisticated LPFM stations will likely choose to purchase more expensive equipment because it will allow them greater flexibility.

If the Commission is concerned about the reliability of uncertified equipment, it could require uncertified equipment be tested regularly. Such a test could require the LPFM station to coordinate with the primary test broadcaster in its market to verify that the uncertified LPFM equipment is receiving test EAS signals. Such coordination would be necessary because the less expensive equipment do not contain record-keeping technology. Therefore, station personnel would be required to identify the time of a local EAS test and to monitor the EAS equipment to ensure a signal was received.

### **Transmitter Relocation**

UCC, *et al.* asks the Commission to expand the definition of a minor change with respect to the distance a transmitter may be relocated and to accordingly grant applicants additional time to file such minor amendments. UCC, *et al.* ask that a milage change of up to 5.6 km, instead of 2 km,

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<sup>4</sup> Once a company invested the time and money in certifying decoder only equipment, such equipment would likely be just as expensive as encoder/decoder equipment, thus defeating the purpose of less extensive requirements for LPFM licensees.

<sup>5</sup> In addition, UCC, *et al.* are simultaneously filing a short comment in the EAS proceeding to remind the Commission to coordinate various EAS decisions.

be considered a minor change for LP100 licenses and 3.2 km, instead of 1 km, for LP10 applications, consistent with those stations' 60 dBu contour.

This change is warranted for several reasons. First, Pub. L. No. 106-553 reduced the number of frequencies available for applicants. *See* 114 Stat. 2762, Sec. 632 (2000). Thus, as the Commission allowed in its *Second R&O*, applicants are seeking out new locations for their transmitters. In addition, as time passes, unforeseen difficulties arise with respect to locating transmitters. For example, many applicants have not been able to obtain local government approval for their first choice transmitter location, and therefore must apply for a different location. However, once that preferable location is approved, relocation of the transmitter is desirable.<sup>6</sup> Moreover, the practical experience of UCC, *et al.*, LPFM applicants, and their technical advisors since the Commission issued its last orders demonstrate that while a 2 km limit often precludes a workable solution, 5.6 km will often provide the necessary flexibility for applicants to relocate their towers.

This flexibility in the minor amendment definition is consistent with the Commission's expansive definition for minor changes in other noncommercial and commercial radio services. *See, e.g., Radio Technical Streamlining R&O*, 14 FCC Rcd 5272, 5276, ¶ 6 (1999); 47 C.F.R. § 73.3573(a)(1). UCC, *et al.* are seeking a definition of minor amendment that is consistent with LPFM stations' 60 dBu contour. Allowing a slight increase in the definition of minor change will decrease the burden on staff of reviewing large numbers of waiver requests. Like other minor amendments, these should be available on a first-come, first serve basis. *See* 47 C.F.R. § 73.3573(e).

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<sup>6</sup> In addition, as described below, mutually exclusive applicants seeking to negotiate a time sharing agreement may wish to find a mutually convenient transmitter location.

## **Database Errors**

The Commission provided a channel finder for LPFM applicants to determine whether a frequency is available for their use in their community. This channel finder is based on data in the Commission's new CDBS filing system. During the initial phase of use in the CDBS system, errors and difficulties have arisen. Because LPFM stations must rely upon the FCC's channel finder to submit an application, errors in the database may cause an LPFM applicant to incorrectly apply for a channel that is not available.

Accordingly, UCC, *et al.* ask the Commission to allow an applicant to amend its application if the applicant can show that its application was rejected solely because of reliance on the FCC's channel finder and underlying database. UCC, *et al.* notes that this would be viable only under limited circumstances. LPFM applicants would need to retain records to demonstrate their reliance on the FCC's channel finder. In addition, because under the FCC's orders the channel finder is updated and frozen 30 days prior to an application window, any data relied upon before that date would not be sufficient to justify an amendment. Finally, an amendment could only be made where an additional frequency is available. Under such limitations, allowing an applicant to amend its application would promote fair procedures and would not create a significant burden on the Commission.

## **Definition of Locally-Originated Broadcasting**

Although the Commission did not impose any main studio or program origination requirements on LPFM stations, it did offer one comparative point to those stations that will offer 8 hours of locally-originated programming per day. *Report & Order*, 15 FCC Rcd at 2261, ¶144. In the *Order on Reconsideration*, 15 FCC Rcd 19208 (2000), the Commission determined that locally-originated programming means programming produced by the licensee within 10 miles of

the proposed transmitting site. *Id.* at 19246, ¶ 98. The Commission clarified that production facilities within 10 miles of the transmitter must be involved for programming to qualify as locally-originated.

Although the Commission has produced a relatively sound definition of locally-originated programming, UCC, *et al.* is concerned that certain applicants are construing this term too liberally. UCC, *et al.* is concerned that some applicants intend to time-shift programming obtained via satellite and rebroadcast it in order to meet the local program origination obligation. UCC, *et al.* therefore feels compelled to seek clarification from the Bureau or the Commission that such programming, if not originally produced within 10 miles of a LPFM transmitter, does not meet the definition of locally-originated programming. UCC, *et al.* believe that a clarification on this point will save the Commission staff significant time because clarification of the rules will limit the number of complaints submitted to the FCC accusing entities of violating the rules.

### **Premature Dismissal of Appendix C Applicants**

In response to Pub. L. No. 106-553's requirement that no LPFM license be granted to any applicant that previously engaged in unlicensed broadcasting, the Commission dismissed all applicants that answered "no" to question 8(a) on FCC Form 318, Section III. *Second R&O* at ¶ 10, App. C. The Commission dismissed these applicants even though they may be able to file a minor amendment changing their answer to question 8(a). *See Second R&O* at ¶ 7. Accordingly, UCC, *et al.* ask the Commission to reconsider dismissing all applicants in Appendix C. A fair process should allow these applicants to amend their applications just as applicants that were affected by the technical portions of Pub. L. No. 106-553.

### **Communication with Applicants**

UCC, *et al.* ask the Commission to improve and systematize its communications with LPFM

applicants. In general, the Commission has made significant efforts to simplify its communications with applicants and to take into account the skills of a typical LPFM applicant. Unfortunately, the Commission has not been completely consistent, causing confusion on the part of LPFM applicants.

UCC, *et al.* request that the FCC LPFM web site remain updated, and that links to that site are easily located. Although the Commission advises applicants to monitor the FCC web site, the LPFM web site is not always updated. For example, seven months after the announcement, the FCC's LPFM web site still does not contain any reference to the requirement that LPFM applicants must file electronically. See <http://www.fcc.gov/lpfm/> (visited June 11, 2001); Public Notice, DA 00-2390 (rel. Oct. 20, 2000).<sup>7</sup> In addition, the Audio Services Division, the Policy and Rules Division, and the Commission all appear to maintain separate web sites. These sites do not contain the same amount of information.<sup>8</sup>

UCC, *et al.* request that a single, well-organized site for LPFM applicants be created. Such a site should include only the relevant information for applicants. UCC, *et al.* request that the Bureau post all public notices relating to LPFM on that web site *immediately* once they are released. UCC, *et al.* also ask that the web site include guidance for applicants wishing to search CDBS and broadcast actions notices. In addition, LPFM applicants would benefit from an explanation from the FCC regarding at what points in the application process they should expect a Commission public notice (which they must seek out) and letters from the Commission (which will arrive in the mail).

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<sup>7</sup> The Audio Services Division site, however, does contain such information.

<sup>8</sup> Because it was easy to locate from the FCC's home page, most LPFM applicants relied upon the FCC's web site. Unfortunately, the link for the Commission's web site recently disappeared completely from the FCC's web site. The FCC web site gave no notice or interim link to assist users with finding LPFM information on the Bureau's web sites. UCC, *et al.* ask that an interim link be provided.

Although LPFM advocates attempt to disseminate some of this information, advocates cannot reach everyone. Basic information should be available from the Commission itself.

UCC, *et al.* suggest that perhaps the new Consumer Information Bureau assist with providing information to LPFM applicants, as this Bureau should have expertise in presenting technical information to the general public and working with small organizations. The CIB could develop simple, easily understandable procedures. For example, LPFM applicants would benefit from a simple post-card acknowledgment of their filings. An improved communications system will save Commission staff significant time because it will reduce the number of clarifying phone calls to the Commission.

### **Conclusion**

For the reasons described above, UCC, *et al.* ask that the Commission or the Bureau make appropriate changes or clarifications to its rules and procedures to improve the operation and fairness of the low power radio service.

Respectfully submitted,

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### AFFIDAVIT OF DARRYL PARKER

1. I am Darryl E. Parker, Senior Vice President of TFT, Inc. ("TFT"), a senior member of the Society of Broadcast Engineers, with over thirty years of experience in broadcast engineering and manufacturing. TFT, founded in 1970, manufactures a wide range of EAS equipment, including Type Certified EAS Encoder/Decoders. TFT additionally manufactures modulation monitors and studio-to-transmitter link equipment used by the broadcast industry. I am knowledgeable about such equipment and am familiar with the Federal Communications Commission's requirements for EAS equipment.

2. TFT does not manufacture Type Certified EAS decoders alone. TFT does manufacture EAS decoders that do not require Type Certification because they are not marketed to the broadcast or cable television markets. I am not aware of any plans by TFT or by other manufacturers to offer stand-alone, FCC Type Certified EAS decoders.

3. If TFT were to offer certified EAS decoders, the expense of obtaining certification would increase the expense of the EAS decoder to a price similar to that of a EAS encoder/decoder. The increased cost would be caused by complying with the FCC's certification requirement that EAS equipment be capable of storing the most recent ten messages in a non-volatile medium as required by CFR 47, Part 11, Subpart B, 11.33(a)(3).

4. Non-Type Certified EAS equipment for consumer and industrial markets is available at a very low cost, approximately \$70.00, that would aurally announce any emergency in a specific geographic area. This equipment could be modified inexpensively to interface to equipment that would interrupt a broadcast stream automatically with an emergency alert, warning, or test.

5. I certify the above to be true to the best of my knowledge.

  
Darryl Parker  
Senior Vice President  
TFT, Inc.

June 11, 2001  
date